

In the Matter of Fred Harrington, Department of Corrections
DOP Docket No. 2006-1250
(Merit System Board, decided June 21, 2006)

Fred Harrington, a Senior Correction Officer at Northern State Prison, Department of Corrections, represented by Thomas L. Bell, Esq., appeals the denial of sick leave injury (SLI) benefits.

The appellant alleged that he sustained a work-related injury to his right hand on August 1, 2005. The appellant submitted an Employer's First Report of Accidental Injury or Occupational Disease on August 22, 2005, alleging that he developed a Methicillin Resistant Staphylococcus Aureus (MRSA) infection on a wound on his right hand as a result of exposure to the MRSA infection at work on August 1, 2005. According to the medical documentation in the record, the appellant underwent surgery on August 6, 2005, in order to clean out the infected area, and he was discharged from the hospital on August 8, 2005. His discharge instructions indicate that he was able to "[r]esume normal activities" at that time. Upon reporting his injury, the appellant was referred to a State-authorized physician on August 22, 2005, who confirmed that the appellant had an MRSA infection and authorized him out of work. On August 29, 2005, the State-authorized physician authorized the appellant out of work and referred him to an infectious disease specialist. In a report dated September 21, 2005, Dr. Robert J. Roland, an infectious disease specialist, confirmed that the appellant was recovering from an MRSA infection. Regarding the cause of the appellant's infection, Dr. Roland stated:

I can only go by the history that was given to me by the patient, the wound occurring at work and subsequently becoming infected and cultures demonstrating [MRSA]. The patient gives me the additional information that a unit at Northern State Prison was terminally cleaned due to several inmates having [MRSA] related infections . . . Without the additional information [confirming the presence of MRSA at the prison and comparing the organisms present at the prison with that which infected the appellant], I can only make the assertion that the patient's wound infection is related to the outbreak of the [MRSA] that was present at Northern State Prison based upon the description by the corrections officer that presented today for evaluation.

Dr. Roland authorized the appellant to return to work on October 6, 2005.

The appointing authority denied the appellant SLI benefits, indicating that he "failed to establish that the infection in [his] hand is work related."

On appeal to the Merit System Board, the appellant argues that Dr. Roland concluded that there was a causal relationship between his MRSA infection and his employment. The appellant emphasizes that all medical documentation relating to his MRSA infection indicate an incident date of August 1, 2005, which he suggests confirms that the infection was related to his employment.

In response, the appointing authority asserts that the appellant's delay in reporting his alleged work-related injury until August 22, 2005 prevented it from sending the appellant to a State-authorized physician promptly to determine the cause and extent of his injury. In addition, it notes that the September 21, 2005 report from Dr. Roland is admittedly speculative regarding the cause of the appellant's infection, and it is clearly based solely on the appellant's own opinion regarding the cause of his MRSA infection. Moreover, the appointing authority underscores that, while the appellant was out of work from August 2, 2005 through August 9, 2005, he returned to work on August 10, 2005 and still neglected to report his alleged work-related infection. Finally, the appointing authority contends that the appellant has the burden of proving that the MRSA infection was work related, and he has not done so in this instance.

Upon receipt of the above submissions, staff of the Division of Merit System Practices and Labor Relations requested that the parties specifically address whether there were documented cases of MRSA at Northern State Prison during the relevant time period. Staff also requested any evidence in support of the parties' supplemental submissions. In response, the appellant submitted a special report authored by Brandon W. Gregory, a Senior Correction Officer at Northern State Prison, on August 11, 2005. According to the special report, an inmate, P.M., was admitted to the prison's infirmary on April 11, 2005 with a documented case of MRSA. On April 15, 2005 medical personnel and prison administrators met with custody staff regarding the "MRSA outbreak." Another Senior Correction Officer underwent surgery to treat his confirmed case of MRSA on May 22, 2005. Gregory also related that, in early August 2005, "contaminated sheets on unit [were placed] in plastic bags (clear) . . . Custody staff haven't been given proper materials to dispose of any [other] hazardous material." The appellant also submits documentation demonstrating that P.M. refused medical treatment on two occasions in late August 2005. It is noted that the appointing authority did not respond to the request for additional information.

CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. See *N.J.A.C. 4A:6-1.6(c)* and *N.J.A.C. 4A:6-1.7(h)*. *N.J.A.C. 4A:6-1.7(a)* provides that an employee is required to report to his or her supervisor any

work accident or condition claimed to have caused disability upon occurrence or discovery, and is responsible for completing a written report on the matter within five days or as soon as possible thereafter.

The appointing authority denied the appellant's request for SLI on the basis that he did not timely report his accident, thereby making it unable to render an accurate determination regarding the work-related nature of the appellant's infection. However, there is medical documentation in the record suggesting that the appellant's MRSA was related to work. Specifically, Dr. Roland, a State-authorized infectious disease specialist, indicated that, if the appellant's account of the MRSA outbreak at Northern State Prison was accurate, his MRSA infection was work related. In the instant matter, the appellant has submitted documentation demonstrating that there was at least one inmate, P.M., who had a documented case of MRSA between April and August 2005, and that at least one other staff member underwent surgery due to his exposure to MRSA. The record also indicates that, as of August 11, 2005, "contaminated sheets on unit [were placed] in plastic bags (clear) . . . Custody staff haven't been given proper materials to dispose of any [other] hazardous material." It must also be emphasized that the appointing authority has not refuted the appellant's assertion that there was an MRSA outbreak at the prison in August 2005. Accordingly, the appellant has demonstrated that his condition was work related. Therefore, he has established his entitlement to SLI benefits for the time period he was authorized out of work, *i.e.*, August 2 through August 9, 2005 and August 22 through October 5, 2005.

ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.